REMARKS

Claims 1 - 43 are pending in this application. Claims 1, 2, 6-41 are rejected under 35 USC 102(e) as being anticipated by Sowinski (US Pat No. 6,601,033). Claim 3 is rejected under 35 USC 103(a) as being unpatentable over Sowinski in view of Fleck (US Pat No. 5,481,904). Claims 4-5, 30, and 42- 43 are rejected under 35 USC 103(a) as being unpatentable over Sowinski.

Applicant respectfully requests allowance of the present application in view of the foregoing amendments and the following remarks.

Improper Official Notice

Applicant specifically traverses the Examiner's official notice findings in claims 4, 30, 42, 43. Only in limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. As the court held in In re Zurko, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001), an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Applicant submits that the noticed facts are not considered to be common knowledge or well-known in the art. The noticed facts are not trivial but substantial, specific and technical as applied to the present invention. Specifically, in Claim 4 "receiving a selection of type of accreditation level from a plurality of accreditation levels, wherein the selected level determines a particular registration fee and a particular percentage of ERC value that will be credited to the customer account" is not trivial enough for official notice; in Claim 30, selecting gasoline as the product for registration of a carbon source, wherein a carbon source represents a liability in an account is not trivial enough for official notice; in Claim 42, "comparing

emissions impact using temperature as a factor comprising: (a) charting the volume of one ton CO2 as it becomes lager over time as a result of increasing temperature, which expands the volume of any given gas; (b) using the mean temperature as the baseline by averaging the land, air and sea surface temperatures of planet earth for a period of years; (c) calculating the increase in temperature from that baseline which expands the CO2 VGT box, and (d) calculating the relative increase in size used to compare the value of current action versus future action while keeping pressure constant at 760 torr in the equation V ∝ T" is clearly not trivial enough for official notice; and finally, in claim 43, "calculating the proportion clean and dirty air generated as a result of a GHG activity by (a) establishing VGT by combining location, elevation, time fame, GHG parameters and time frame of GHG activity; (b) using resulting VGT as the base to calculate the VGT of Oxygen and other molecules consumed or freed up by GHG activity; (c) expressing the amount of "clean air" lost or gained from the GHG activity" is clearly not trivial enough to take official notice.

Sowinski (US Pat No. 6,601,033) not Available as Prior Art

When any claim of an application is rejected, the inventor of the subject matter of the rejected claim may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference on which the rejection is based. The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application.

Applicant hereby submits herewith a Rule 131 Affidavit signed by all inventors to antedate the Sowinski reference as prior art by demonstrating conception of the invention prior to the effective date of the Sowinski reference (October 24, 2000) coupled with due diligence from prior to said date to a subsequent filing of Applicant's provisional application (November 1, 2000). The provisional application may be used to establish a constructive reduction to practice date as of the filing date of the provisional application. All of the claims find support in the provisional application. Exhibits of records accompany and form part of the Affidavit. The Sowinski reference does not claim the same patentable invention. The filing of this Rule

131 Affidavit is not an admission that the prior art reference sought to be antedated renders the invention in question unpatentable.

Specifically, the effective date of the Sowinski reference is October 24, 2000. *Conception* (at least as early as October 20, 2000) has been established prior to the effective date when the inventors submitted their disclosure to their patent attorney, Christine Q. McLeod. On November 1, 2000, just 8 working days after receiving the disclosure from the inventors, the patent attorney filed provisional application Serial No. 60/245,327 from which priority is claimed for the above-referenced application, evidencing *constructive reduction to practice*. The few days between conception and constructive reduction to practice are coupled with due diligence of the attorney drafting and filing the application.

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. Conception is less a matter of signature than it is one of disclosure. *Haskell v. Coleburne*, 671 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986) (Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient. Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence.).

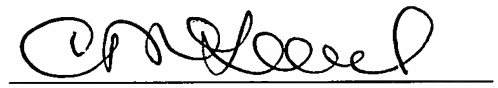
Accordingly, Applicant submits that it has sufficiently antedated the Sowinski reference by demonstrating conception of the invention prior to the effective date of the Sowinski reference coupled with due diligence from prior to said date to a subsequent filing of Applicant's provisional application and requests that the rejection be withdrawn.

Conclusion

Given that the Sowinski reference is no longer available as a reference, and all claims were rejected in view of Sowinski, Applicant submits that all of the rejections are hereby moot. Applicant also submits that the official noted facts are improper and should be withdrawn. Reconsideration of the application in light of the above Remarks and allowance of claims 1-43 are respectfully requested.

Respectfully submitted,

Dated: 5/22/07

By: 

Christine Q. McLeod
Registration No. 36,213
(407) 926-7723

Beusse Wolter Sanks Mora & Maire
390 N. Orange Ave, Suite 2500
Orlando, FL 32801